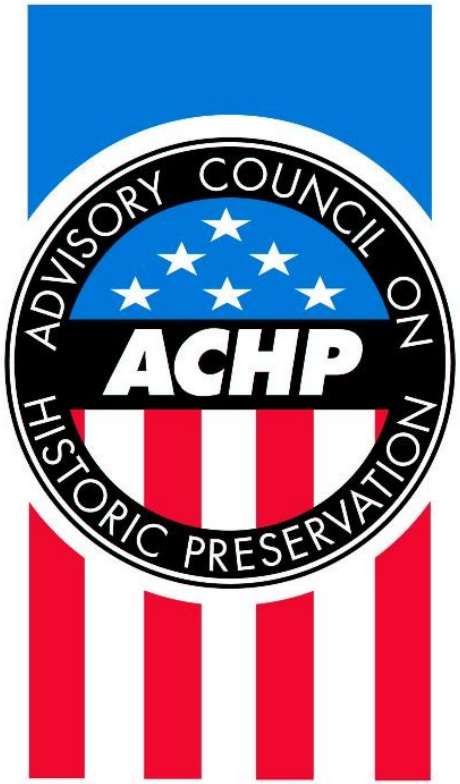

Mitigation in the Section 106 Process

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What is Section 106?

- ***Section 106 of the National Historic Preservation Act requires Federal agencies, with jurisdiction over undertakings, to:***
  - ***Take into account effects on National Register of Historic Places eligible and listed properties***
  - ***Afford the Council a reasonable opportunity to comment, and***
  - ***Do these prior to approving expenditure of funds or issuing licenses, leases, or other forms of approval***

Section 106: A 4-Step Process

- ***Determine Applicability***
  - ***Is the Federal action an undertaking under 36 CFR Part 800?***
- ***Determine Area of Potential Effects and Identify and Evaluate Resources***
  - ***Is there a potential for historic properties to exist in areas affected by the undertaking?***
  - ***If properties do exist, are they eligible or potentially eligible for the National Register?***
- ***Determine Effects***
  - ***How will historic properties be effected?***
- ***Resolve Adverse Effects***
  - ***Can adverse effects be avoided, minimized or mitigated?***

The Keystone of Section 106

- ***Consultation***
- ***Consultation***
- ***Consultation***
- ***Consultation***

All four steps of the process require consultation - the earlier the better!

Resolving Adverse Effects

- ***Typically resolved through an agreement document – MOAs or PAs***
- ***ACHP may or may not be involved in these agreement documents***
- ***Where agreement can't be reached, agency requests Council comments***
- ***Council responds to agency head***
- ***Agency must take comments into consideration in making a decision***

Facts About NEPA & Section 106

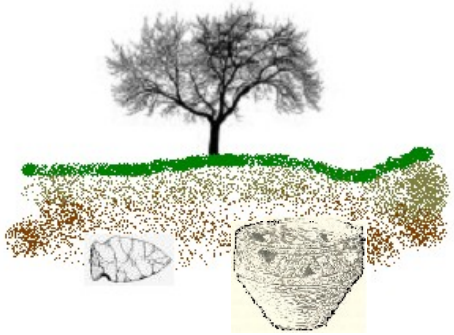
- ***NEPA and Section 106 are separate laws requiring separate compliance***
- ***Although possible, NEPA and Section 106 are rarely integrated***
- ***Section 106 typically is done after NEPA***
- ***NEPA is the agency's decision-making process***
- ***NEPA provides historic preservation its best chance to avoid or minimize adverse effects***

The Benefits of Integrating NEPA and Section 106

- ***Focuses public interest review on historic properties along with other environmental values***
- ***Requires agencies to consider historic properties early in the planning process***
- ***Historic preservation values become part of project alternative identification & selection***
- ***Reduces likelihood of Section 106 consultation becoming mitigation options***

When Mitigation is The Only Option

Adverse Effects



Only Result in Mitigation

What Are The Costs of Mitigation

- **Loss of the resource**
  - **Archeological sites**
  - **Historic structures and buildings**
  - **Traditional cultural properties/sacred sites**
- **Loss of agency assets**
- **Harm to partnerships**
- **Reduces future heritage tourism potential**
- **Financial cost to the agency**

Typical Mitigation Strategy

- ***Negotiations with stakeholders to mitigate adverse effects typically result in a mitigation strategy that involves:***

Site A impacts = Site A mitigation

Site B impacts = Site B mitigation

Site C impacts = Site C mitigation

What Drives This Strategy?

- ***Agency historic preservation programs are compliance oriented & project driven***
- ***Section 106 is a project driven process***

- ***We are nurtured,***
  trained, and
  rewarded for
  <u>project</u> management

Thinking Outside the Box

- ***Should Federal Funds be spent to mitigate sites A?***
  - ***What is the value of the site to others?***
    - ***Scientific value***
    - ***Educational value***
    - ***Sacred or traditional value***
    - ***Heritage tourism value***
  - ***Are mitigation costs in line with the value of the site?***

Thinking Outside the Box

- ***Is site B the best site on which to spend Federal funds to mitigate?***
- ***What is the value of this site in relation to other sites in an installation's inventory of historic properties?***
  - ***Do other sites have equal or greater value?***
  - ***Can we trade off adverse impacts on one site for mitigation of another?***

Thinking Outside the Box

- ***Are there other options for site C that don't include archeological site excavation or historic building documentation?***
  - ***Do other sites offer more long-term preservation potential?***
  - ***Could we synthesize gray literature on archeological sites to provide a more structured context for future investigations?***

Thinking Outside the Box

- ***Does mitigation have to be limited to the installation?***
  - ***Could we partner with others, like the Archaeological Conservancy, to preserve archeological sites off the installation?***
  - ***Can we use historic preservation values as a justification to provide "outside the fence" buffer areas for installations?***

Thinking Outside the Box

- ***Does archeological mitigation have to be done after project conception?***
- ***Could we develop mitigation banking for archeological sites similar to banking for wetlands?***

Thinking Outside the Box

- ***Two key points to remember about innovative mitigation strategies:***
  - ***They probably won't win you any friends***
  - ***They require changing agency historic preservation programs from a project driven strategy to a resource management philosophy***

Final Thoughts

- ***Focus on the significant:***

  When every building, structure or archeological

  site is significant, none are significant

- ***Know your agency's mission:***

  The best opportunity for preserving historic properties is where preservation supports an agency's mission

- ***Manage the resources wisely:***

  The history of our forbearers is available to our children only through what we choose to leave them